

## AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$1,000” in first par.

## FIREWORKS FOR AGRICULTURAL PURPOSES

Section 3 of act June 4, 1954, provided that: “This Act [enacting this section] shall not be effective with respect to—

“(1) the transportation of fireworks into any State or Territory for use solely for agricultural purposes,

“(2) the delivery of fireworks for transportation into any State or Territory for use solely for agricultural purposes, or

“(3) any attempt to engage in any such transportation or delivery for use solely for agricultural purposes, until sixty days have elapsed after the commencement of the next regular session of the legislature of such State or Territory which begins after the date of enactment of this Act [June 4, 1954].”

**[§ 837. Repealed. Pub. L. 91-452, title XI, § 1106(b)(1), Oct. 15, 1970, 84 Stat. 960]**

Section, Pub. L. 86-449, title II, § 203, May 6, 1960, 74 Stat. 87, related to illegal use or possession of explosives and threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives. See section 844 of this title.

**CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS**

Sec.

- 841. Definitions.
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## AMENDMENTS

1990—Pub. L. 101-647, title XXXV, § 3520, Nov. 29, 1990, 104 Stat. 4923, substituted “Licenses” for “Licensing” in item 843.

1970—Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 952, added chapter 40 and items 841 to 848.

**§ 841. Definitions**

As used in this chapter—

(a) “Person” means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(b) “Interstate” or foreign commerce means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(c) “Explosive materials” means explosives, blasting agents, and detonators.

(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, “explosives” means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black

powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term “explosive” is defined in subsection (j) of such section 844.

(e) “Blasting agent” means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

(f) “Detonator” means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(g) “Importer” means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

(h) “Manufacturer” means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

(i) “Dealer” means any person engaged in the business of distributing explosive materials at wholesale or retail.

(j) “Permittee” means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

(k) “Secretary” means the Secretary of the Treasury or his delegate.

(l) “Crime punishable by imprisonment for a term exceeding one year” shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(m) “Licensee” means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

(n) “Distribute” means sell, issue, give, transfer, or otherwise dispose of.

(o) “Convention on the Marking of Plastic Explosives” means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

(p) “Detection agent” means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

(1) Ethylene glycol dinitrate (EGDN),  $C_2H_4(NO_3)_2$ , molecular weight 152, when the

minimum concentration in the finished explosive is 0.2 percent by mass;

(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB),  $C_6H_{12}(NO_2)_2$ , molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(3) Para-Mononitrotoluene (p-MNT),  $C_7H_7NO_2$ , molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(4) Ortho-Mononitrotoluene (o-MNT),  $C_7H_7NO_2$ , molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, that has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(q) "Plastic explosive" means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than  $10^{-4}$  Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.

(Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 952; amended Pub. L. 104-132, title VI, § 602, Apr. 24, 1996, 110 Stat. 1288.)

#### REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

#### AMENDMENTS

1996—Subsecs. (o) to (q). Pub. L. 104-132 added subsecs. (o) to (q).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 607 of title VI of Pub. L. 104-132 provided that: "Except as otherwise provided in this title [amending this section, sections 842, 844, and 845 of this title, and section 1595a of Title 19, Customs Duties, and enacting provisions set out as a note below], this title and the amendments made by this title shall take effect 1 year after the date of enactment of this Act [Apr. 24, 1996]."

#### EFFECTIVE DATE

Section 1105(a), (b) of Pub. L. 91-452 provided that:

"(a) Except as provided in subsection (b), the provisions of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect one hundred and twenty days after the date of enactment of this Act [Oct. 15, 1970].

"(b) The following sections of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect on the date of the enactment of this Act [Oct. 15, 1970]: sections 841, 844(d), (e), (f), (g), (h), (i), and (j), 845, 846, 847, 848 and 849 [no section 849 was enacted]."

#### SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-298, § 1, Oct. 12, 1982, 96 Stat. 1319, provided: "That this Act [amending section 844 of this title] may be cited as the 'Anti-Arson Act of 1982'."

#### SHORT TITLE OF 1975 AMENDMENT

Pub. L. 93-639, § 1, Jan. 4, 1975, 88 Stat. 2217, provided: "That this Act [amending sections 845 and 921 of this

title] may be cited as 'Amendments of 1973 to Federal Law Relating to Explosives'."

#### TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official of Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for storage of explosives under this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(g), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

#### FINDINGS AND PURPOSES OF TITLE VI OF PUB. L. 104-132

Section 601 of title VI of Pub. L. 104-132 provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) plastic explosives were used by terrorists in the bombings of Pan American Airlines flight number 103 in December 1988 and UTA flight number 722 in September 1989;

"(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

"(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquility, and gravely affects interstate and foreign commerce;

"(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

"(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

"(b) PURPOSE.—The purpose of this title [amending this section, sections 842, 844, and 845 of this title, and section 1595a of Title 19, Customs Duties, and enacting provisions set out as a note above] is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991."

#### MARKING, RENDERING INERT, AND LICENSING OF EXPLOSIVE MATERIALS

Section 732 of Pub. L. 104-132, as amended by Pub. L. 104-208, div. A, title I, § 101(a) [title I, § 113], Sept. 30, 1996, 110 Stat. 3009, 3009-21; Pub. L. 105-61, title I, Oct. 10, 1997, 111 Stat. 1272, provided that:

"(a) STUDY.—

"(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act [Apr. 24, 1996], the Secretary of the Treasury (referred to in this section as the 'Secretary') shall conduct a study of—

"(A) the tagging of explosive materials for purposes of detection and identification;

"(B) the feasibility and practicability of rendering common chemicals used to manufacture explosive materials inert;

"(C) the feasibility and practicability of imposing controls on certain precursor chemicals used to manufacture explosive materials; and

“(D) State licensing requirements for the purchase and use of commercial high explosives, including—

- “(i) detonators;
- “(ii) detonating cords;
- “(iii) dynamite;
- “(iv) water gel;
- “(v) emulsion;
- “(vi) blasting agents; and
- “(vii) boosters.

“(2) EXCLUSION.—No study conducted under this subsection or regulation proposed under subsection (e) shall include black or smokeless powder among the explosive materials considered.

“(3) NEW PREVENTION TECHNOLOGIES.—In addition to the study of taggants as provided herein, the Secretary, in consultation with the Attorney General, shall concurrently report to the Congress on the possible use, and exploitation of technologies such as vapor detection devices, computed tomography, nuclear quadrupole resonance, thermal neutron analysis, pulsed fast-neutron analysis, and other technologies upon which recommendations to the Congress may be made for further study, funding, and use of the same in preventing and solving acts of terrorism involving explosive devices.

“(b) CONSULTATION.—

“(1) IN GENERAL.—In conducting the study under subsection (a), the Secretary shall consult with—

“(A) Federal, State, and local officials with expertise in the area of chemicals used to manufacture explosive materials; and

“(B) such other individuals as the Secretary determines are necessary.

“(2) FERTILIZER RESEARCH CENTERS.—In conducting any portion of the study under subsection (a) relating to the regulation and use of fertilizer as a pre-explosive material, the Secretary of the Treasury shall consult with and receive input from non-profit fertilizer research centers.

“(c) REPORT.—Not later than 30 days after the completion of the study conducted under subsection (a), the Secretary shall submit a report to the Congress, which shall be made public, that contains—

- “(1) the results of the study;
- “(2) any recommendations for legislation; and
- “(3) any opinions and findings of the fertilizer research centers.

“(d) HEARINGS.—Congress shall have not less than 90 days after the submission of the report under subsection (c) to—

- “(1) review the results of the study; and
- “(2) hold hearings and receive testimony regarding the recommendations of the Secretary.

“(e) REGULATIONS.—

“(1) IN GENERAL.—Not later than 6 months after the submission of the report required by subsection (c), the Secretary may submit to Congress and publish in the Federal Register draft regulations for the addition of tracer elements to explosive materials manufactured in or imported into the United States, of such character and in such quantity as the Secretary may authorize or require, if the results of the study conducted under subsection (a) indicate that the tracer elements—

- “(A) will not pose a risk to human life or safety;
- “(B) will substantially assist law enforcement officers in their investigative efforts;

“(C) will not substantially impair the quality of the explosive materials for their intended lawful use;

“(D) will not have a substantially adverse effect on the environment; and

“(E) the costs associated with the addition of the tracers will not outweigh benefits of their inclusion.

“(2) EFFECTIVE DATE.—The regulations under paragraph (1) shall take effect 270 days after the Secretary submits proposed regulations to Congress pursuant to paragraph (1), except to the extent that the

effective date is revised or the regulation is otherwise modified or disapproved by an Act of Congress.

“(f) SPECIAL STUDY.—

“(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of the Treasury shall enter into a contract with the National Academy of Sciences (referred to in this section as the ‘Academy’) to conduct a study of the tagging of smokeless and black powder by any viable technology for purposes of detection and identification. The study shall be conducted by an independent panel of 5 experts appointed by the Academy.

“(2) STUDY ELEMENTS.—The study conducted under this subsection shall—

“(A) indicate whether the tracer elements, when added to smokeless and black powder—

“(i) will pose a risk to human life or safety;

“(ii) will substantially assist law enforcement officers in their investigative efforts;

“(iii) will impair the quality and performance of the powders (which shall include a broad and comprehensive sampling of all available powders) for their intended lawful use, including, but not limited to the sporting, defense, and handloading uses of the powders, as well as their use in display and lawful consumer pyrotechnics;

“(iv) will have a substantially adverse effect on the environment;

“(v) will incur costs which outweigh the benefits of their inclusion, including an evaluation of the probable production and regulatory cost of compliance to the industry, and the costs and effects on consumers, including the effect on the demand for ammunition; and

“(vi) can be evaded, and with what degree of difficulty, by terrorists or terrorist organizations, including evading tracer elements by the use of precursor chemicals to make black or other powders; and

“(B) provide for consultation on the study with Federal, State, and local officials, non-governmental organizations, including all national police organizations, national sporting organizations, and national industry associations with expertise in this area and such other individuals as shall be deemed necessary.

“(3) REPORT AND COSTS.—The study conducted under this subsection shall be presented to Congress 2 years after the enactment of this subsection [enacted Sept. 30, 1996] and be made available to the public, including any data tapes or data used to form such recommendations. There are authorized to be appropriated such sums as may be necessary to carry out the study.”

#### CONGRESSIONAL DECLARATION OF PURPOSE

Section 1101 of title XI of Pub. L. 91-452 provided that: “The Congress hereby declares that the purpose of this title [enacting this chapter amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set out as notes under this section] is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.”

#### MODIFICATION OF OTHER PROVISIONS

Section 1104 of title XI of Pub. L. 91-452, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, pro-

vided that: "Nothing in this title [enacting this chapter, amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set out as notes under this section] shall be construed as modifying or affecting any provision of—

"(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1986);

"(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

"(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

"(d) Sections 831 through 836 of title 18, United States Code; or

"(e) Chapter 44 of title 18, United States Code."

#### CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Section 1105(c) of Pub. L. 91-452 provided that: "Any person (as defined in section 841(a) of title 18, United States Code) engaging in a business or operation requiring a license or permit under the provisions of chapter 40 of such title 18, who was engaged in such business or operation on the date of enactment of this Act [Oct. 15, 1970] and who has filed an application for a license or permit under the provisions of section 843 of such chapter 40 prior to the effective date of such section 843 [see Effective Date note set out above] may continue such business or operation pending final action on his application. All provisions of such chapter 40 shall apply to such applicant in the same manner and to the same extent as if he were a holder of a license or permit under such chapter 40."

#### AUTHORIZATION OF APPROPRIATIONS

Section 1107 of title XI of Pub. L. 91-452 provided that: "There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title [enacting this chapter, amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set as notes under this section]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1101; title 19 section 1595a.

### § 842. Unlawful acts

(a) It shall be unlawful for any person—

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly—

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may re-

ceive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

(1) a licensee;

(2) a permittee; or

(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

(d) It shall be unlawful for any person knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(6) has been adjudicated a mental defective.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in

any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.

(i) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

(l) It shall be unlawful for any person to manufacture any plastic explosive that does not contain a detection agent.

(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent.

(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent.

(2) This subsection does not apply to—

(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by any person during the period beginning on that date and ending 3 years after that date of enactment; or

(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment of this subsection, to fail to report to the Secretary within 120 days after such date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation.

(p) DISTRIBUTION OF INFORMATION RELATING TO EXPLOSIVES, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION.—

(1) DEFINITIONS.—In this subsection—

(A) the term “destructive device” has the same meaning as in section 921(a)(4);

(B) the term “explosive” has the same meaning as in section 844(j); and

(C) the term “weapon of mass destruction” has the same meaning as in section 2332a(c)(2).

(2) PROHIBITION.—It shall be unlawful for any person—

(A) to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, with the intent that the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence; or

(B) to teach or demonstrate to any person the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute to any person, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, knowing that such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 953; amended Pub. L. 100-690, title

VI, § 6474(c), (d), Nov. 18, 1988, 102 Stat. 4380; Pub. L. 101-647, title XXXV, § 3521, Nov. 29, 1990, 104 Stat. 4923; Pub. L. 103-322, title XI, §§ 110508, 110516, Sept. 13, 1994, 108 Stat. 2018, 2020; Pub. L. 104-132, title VI, § 603, title VII, § 707, Apr. 24, 1996, 110 Stat. 1289, 1296; Pub. L. 106-54, § 2(a), Aug. 17, 1999, 113 Stat. 398.)

#### REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsecs. (m)(2), (n)(2), and (o), is the date of enactment of Pub. L. 104-132, which was approved Apr. 24, 1996.

#### AMENDMENTS

1999—Subsec. (p). Pub. L. 106-54 added subsec. (p).

1996—Subsec. (h). Pub. L. 104-132, § 707, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen."

Subsecs. (l) to (o). Pub. L. 104-132, § 603, added subsecs. (l) to (o).

1994—Subsec. (d). Pub. L. 103-322, § 110516, substituted "any person" for "any licensee" in introductory provisions.

Subsec. (i). Pub. L. 103-322, § 110508, inserted "or possess" after "receive" in concluding provisions.

1990—Subsec. (d)(5). Pub. L. 101-647, § 3521(1), substituted "; or" for a period.

Subsec. (i)(3). Pub. L. 101-647, § 3521(2), substituted "; or" for a period.

1988—Subsec. (d)(5). Pub. L. 100-690, § 6474(c), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954); or".

Subsec. (i)(3). Pub. L. 100-690, § 6474(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or".

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 603 of Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 844, 845, 981, 982, 2332b, 2339A of this title; title 8 section 1101; title 31 section 9703.

### § 843. Licenses and user permits

(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed \$200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701-706 of title 5, United States Code.

(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit. (Added Pub. L. 91-452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 955.)

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Treasury under this chapter to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see Transfer of Functions note set out under section 841 of this title.

#### CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Filing of application for a license or permit prior to the effective date of this section as authorizing any person engaged in a business or operation requiring a license or a permit on Oct. 15, 1970 to continue such business or operation pending final action on such application, see section 1105(c) of Pub. L. 91-452, set out as a note under section 841 of this title.

### § 844. Penalties

(a) Any person who—

(1) violates any of subsections (a) through (i) or (l) through (o) of section 842 shall be fined under this title, imprisoned for not more than 10 years, or both; and

(2) violates subsection (p)(2) of section 842, shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined under this title or imprisoned not more than one year, or both.

(c)(1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986

relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than 10 years or fined under this title, or both.

(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency

thereof, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.

(g)(1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to—

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Research and Special Projects Administration for the handling of hazardous materials pursuant to chapter 51 of title 49.

(h) Whoever—

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States,

including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 10 years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for 20 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of

fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section and section 842(p), the term “explosive” means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

(k) A person who steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(l) A person who steals any explosive material from a licensed importer, licensed manufacturer, or licensed dealer, or from any permittee shall be fined under this title, imprisoned not more than 10 years, or both.

(m) A person who conspires to commit an offense under subsection (h) shall be imprisoned for any term of years not exceeding 20, fined under this title, or both.

(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy.

(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3)) or drug trafficking crime (as defined in section 924(c)(2)) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of an explosive material.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 956; amended Pub. L. 97-298, §2, Oct. 12, 1982, 96 Stat. 1319; Pub. L. 98-473, title II, §1014, Oct. 12, 1984, 98 Stat. 2142; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title VI, §6474(a), (b), Nov. 18, 1988, 102 Stat. 4379; Pub. L. 101-647, title XXXV, §3522, Nov. 29, 1990,



104 Stat. 4924; Pub. L. 103-272, §5(e)(7), July 5, 1994, 108 Stat. 1374; Pub. L. 103-322, title VI, §60003(a)(3), title XI, §§110504(b), 110509, 110515(b), 110518(b), title XXXII, §§320106, 320917(a), title XXXIII, §330016(1)(H), (K), (L), (N), Sept. 13, 1994, 108 Stat. 1969, 2016, 2018, 2020, 2111, 2129, 2147, 2148; Pub. L. 104-132, title VI, §604, title VII, §§701, 706, 708(a), (c)(3), 724, Apr. 24, 1996, 110 Stat. 1289, 1291, 1295-1297, 1300; Pub. L. 104-294, title VI, §603(a), Oct. 11, 1996, 110 Stat. 3503; Pub. L. 106-54, §2(b), Aug. 17, 1999, 113 Stat. 399.)

## REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c)(1), is set out as Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (c)(1), is section 5845(a) of Title 26.

## AMENDMENTS

1999—Subsec. (a). Pub. L. 106-54, §2(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 106-54, §2(b)(2), inserted “and section 842(p)” after “this section”.

1996—Subsec. (a). Pub. L. 104-132, §604, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined under this title or imprisoned not more than ten years, or both.”

Subsec. (e). Pub. L. 104-132, §§708(a)(1), 724, substituted “interstate or foreign commerce, or in or affecting interstate or foreign commerce,” for “commerce” and “10” for “five”.

Subsec. (f). Pub. L. 104-132, §708(a)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.”

Subsec. (h). Pub. L. 104-132, §708(a)(3), in concluding provisions, substituted “10 years” and “20 years” for “5 years but not more than 15 years” and “10 years but not more than 25 years”, respectively.

Subsec. (i). Pub. L. 104-294, which directed substitution of comma for “,” each place appearing, could not be executed because “,” did not appear in text subsequent to amendment by Pub. L. 104-132, §708(a)(4). See below.

Pub. L. 104-132, §708(c)(3), struck out at end “No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.”

Pub. L. 104-132, §708(a)(4)(B), which directed substitution of “not less than 7 years and not more than 40 years, fined under this title” for “not more than 40 years, fined the greater of a fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” was executed by making the sub-

stitution in text which read “not more than 40 years, fined the greater of the fine under this title” to reflect the probable intent of Congress.

Pub. L. 104-132, §708(a)(4)(A), substituted “not less than 5 years and not more than 20 years, fined under this title” for “not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed.”

Subsec. (n). Pub. L. 104-132, §701, added subsec. (n).

Subsec. (o). Pub. L. 104-132, §706, added subsec. (o).

1994—Subsec. (a). Pub. L. 103-322, §330016(1)(L), substituted “fined under this title” for “fined not more than \$10,000”.

Subsec. (b). Pub. L. 103-322, §330016(1)(H), substituted “fined under this title” for “fined not more than \$1,000”.

Subsec. (c). Pub. L. 103-322, §110509, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d). Pub. L. 103-322, §330016(1)(L), (N), substituted “fined under this title” for “fined not more than \$10,000” after “ten years, or” and for “fined not more than \$20,000” after “twenty years or”.

Pub. L. 103-322, §60003(a)(3)(A), struck out before period at end “as provided in section 34 of this title”.

Subsec. (e). Pub. L. 103-322, §330016(1)(K), substituted “fined under this title” for “fined not more than \$5,000”.

Subsec. (f). Pub. L. 103-322, §320106(1)(B), which directed the substitution of “not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than twenty years, or fined not more than \$10,000”, was executed by making the substitution for “not more than twenty years, or fined not more than \$20,000”, to reflect the probable intent of Congress.

Pub. L. 103-322, §320106(1)(A), substituted “not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than ten years, or fined not more than \$10,000”.

Pub. L. 103-322, §60003(a)(3)(B), struck out before period at end “as provided in section 34 of this title”.

Subsec. (g)(2)(B). Pub. L. 103-272 substituted “chapter 51 of title 49” for “the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.)”.

Subsec. (h). Pub. L. 103-322, §320106(2), in concluding provisions, substituted “5 years but not more than 15 years” for “five years” and “10 years but not more than 25 years” for “ten years”.

Subsec. (i). Pub. L. 103-322, §320917(a), inserted at end “No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.”

Pub. L. 103-322, §320106(3), substituted “not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than ten years or fined not more than \$10,000” and “not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,” for “not more than twenty years or fined not more than \$20,000”.

Pub. L. 103-322, §60003(a)(3)(C), struck out “as provided in section 34 of this title” after “death penalty or to life imprisonment”.

Subsec. (k). Pub. L. 103-322, §110504(b), added subsec. (k).

Subsec. (l). Pub. L. 103-322, §110515(b), added subsec. (l).

Subsec. (m). Pub. L. 103-322, §110518(b), added subsec. (m).

1990—Subsec. (d). Pub. L. 101-647 substituted “subsection,” for “subsection,” before “shall be subject to imprisonment”.

1988—Subsec. (g). Pub. L. 100-690, §6474(a), designated existing provisions as par. (1), substituted “Except as

provided in paragraph (2), whoever” for “Whoever”, inserted “in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or” after “possess an explosive”, inserted “or airport” after “such building”, substituted “not more than five years, or fined under this title, or both” for “not more than one year, or fined not more than \$1,000, or both”, and added par. (2).

Subsec. (h). Pub. L. 100-690, § 6474(b)(2), which directed the amendment of subsec. (h) by striking “shall be sentenced” through the end and inserting new provisions was executed by striking “shall be sentenced” the first time it appeared through the end of the subsection which resulted in inserting concluding provisions and striking out former concluding provisions which read as follows: “shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.”

Subsec. (h)(2). Pub. L. 100-690, § 6474(b)(1), in par. (2), struck out “unlawfully” after “explosive”.

1986—Subsec. (c). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1984—Subsecs. (d), (f), (i). Pub. L. 98-473 substituted “personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,” for “personal injury results” and “death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,” for “death results”.

1982—Subsecs. (e), (f). Pub. L. 97-298, § 2(a), inserted “fire or” after “by means of” wherever appearing.

Subsec. (h)(1). Pub. L. 97-298, § 2(b), inserted “fire or” after “uses”.

Subsec. (i). Pub. L. 97-298, § 2(c), inserted “fire or” after “by means of”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604 of Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 320917(b) of Pub. L. 103-322 provided that: “The amendment made by subsection (a) [amending this section] shall not apply to any offense described in the amendment that was committed more than 5 years prior to the date of enactment of this Act [Sept. 13, 1994].”

#### EFFECTIVE DATE

Subsecs. (a) to (c) of this section effective 120 days after Oct. 15, 1970, and subsecs. (d) to (j) of this section effective on Oct. 15, 1970, see section 1105(a), (b), set out as a note under section 841 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 842, 845, 846, 981, 982, 1956, 2332b, 2339A, 2516, 3295, 3592, 5032 of this title; title 8 section 1101; title 31 section 9703.

### § 845. Exceptions; relief from disabilities

(a) Except in the case of subsections<sup>1</sup> (l), (m), (n), or (o) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or

air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term “destructive device” in section 921(a)(4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(A) research, development, or testing of new or modified explosive materials;

(B) training in explosives detection or development or testing of explosives detection equipment; or

(C) forensic science purposes; or

(2) was plastic explosive that, within 3 years after the date of enactment of the Anti-

<sup>1</sup> So in original. Probably should be “subsection”.

terrorism and Effective Death Penalty Act of 1996, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

(3) For purposes of this subsection, the term “military device” includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 958; amended Pub. L. 93-639, §101, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 104-132, title VI, §605, Apr. 24, 1996, 110 Stat. 1289.)

#### REFERENCES IN TEXT

The date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 104-132, which was approved Apr. 24, 1996.

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-132, §605(1), inserted “(l), (m), (n), or (o) of section 842 and subsections” after “subsections” in introductory provisions and “, and which pertain to safety” before semicolon at end of par. (1).

Subsec. (c). Pub. L. 104-132, §605(2), added subsec. (c).

1975—Subsec. (a)(5). Pub. L. 93-639 substituted provisions exempting commercially manufactured black powder in quantities not exceeding fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices for such exemption of black powder in quantities not exceeding five pounds.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104-132, set out as a note under section 841 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 926 of this title; title 15 section 2052.

### § 846. Additional powers of the Secretary

(a) The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory

authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

(b) The Secretary is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Secretary pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Secretary by State and local authorities.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 959; amended Pub. L. 104-208, div. A, title I, §101(f) [title VI, §654(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369.)

#### AMENDMENTS

1996—Pub. L. 104-208 designated existing provisions as subsec. (a) and added subsec. (b).

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Treasury under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see Transfer of Functions note set out under section 841 of this title.

#### AUTHORIZATION OF APPROPRIATIONS

Section 101(f) [title VI, §654(b)] of div. A of Pub. L. 104-208 provided that: “There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection [probably means “this section” which amended this section].”

#### CERTIFICATION OF EXPLOSIVES DETECTION CANINES

Pub. L. 106-554, §1(a)(3) [title VI, §626], Dec. 21, 2000, 114 Stat. 2763, 2763A-162, provided that: “Hereafter, the Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by Federal agencies, or other agencies providing explosives detection services at airports in the United States.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-58, title VI, §630, Sept. 29, 1999, 113 Stat. 473.

Pub. L. 105-277, div. A, §101(h) [title VI, §640], Oct. 21, 1998, 112 Stat. 2681-480, 2681-526.

Pub. L. 105-61, title VI, §627, Oct. 10, 1997, 111 Stat. 1315.

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §653(a)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369.

### § 847. Rules and regulations

The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 959.)

## TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Treasury under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see Transfer of Functions note set out under section 841 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 842 of this title.

**§ 848. Effect on State law**

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 91-452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 959.)

**CHAPTER 41—EXTORTION AND THREATS**

Sec.	
871.	Threats against President and successors to the Presidency.
872.	Extortion by officers or employees of the United States.
873.	Blackmail.
874.	Kickbacks from public works employees.
875.	Interstate communications.
876.	Mailing threatening communications.
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878.	Threats and extortion against foreign officials, official guests, or internationally protected persons.
879.	Threats against former Presidents and certain other persons.
880.	Receiving the proceeds of extortion.

## AMENDMENTS

2000—Pub. L. 106-544, §2(b)(2), Dec. 19, 2000, 114 Stat. 2715, struck out “protected by the Secret Service” after “other persons” in item 879.

1994—Pub. L. 103-322, title XXXII, §320601(a)(2), Sept. 13, 1994, 108 Stat. 2115, added item 880.

1982—Pub. L. 97-297, §1(b), Oct. 12, 1982, 96 Stat. 1317, added item 879.

1976—Pub. L. 94-467, §9, Oct. 8, 1976, 90 Stat. 2001, added item 878.

1962—Pub. L. 87-829, §2, Oct. 15, 1962, 76 Stat. 956, substituted “and successors to the Presidency” for “, President-elect, and Vice President” in item 871.

1955—Act June 1, 1955, ch. 115, §2, 69 Stat. 80, inserted “President-elect, and Vice President” in item 871.

**§ 871. Threats against President and successors to the Presidency**

(a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any

such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined under this title or imprisoned not more than five years, or both.

(b) The terms “President-elect” and “Vice President-elect” as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2. The phrase “other officer next in the order of succession to the office of President” as used in this section shall mean the person next in the order of succession to act as President in accordance with title 3, United States Code, sections 19 and 20.

(June 25, 1948, ch. 645, 62 Stat. 740; June 1, 1955, ch. 115, §1, 69 Stat. 80; Pub. L. 87-829, §1, Oct. 15, 1962, 76 Stat. 956; Pub. L. 97-297, §2, Oct. 12, 1982, 96 Stat. 1318; Pub. L. 103-322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

## HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §89 (Feb. 14, 1917, ch. 64, 39 Stat. 919).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of “principal” in section 2 of this title.

Minor changes were made in phraseology.

## AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$1,000”.

1982—Subsec. (a). Pub. L. 97-297 inserted “, to kidnap,” after “containing any threat to take the life of”.

1962—Pub. L. 87-829 designated existing provisions as subsec. (a), extended the provisions of such subsection to include any other officer next on the order of succession to the office of President and the Vice-President-elect, added subsec. (b), and substituted “and successors to the Presidency” for “, President-elect, and Vice President” in section catchline.

1955—Act June 1, 1955, included in section catchline and in text, provision for penalties for threats against the President-elect and the Vice President.

## SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-544, §1, Dec. 19, 2000, 114 Stat. 2715, provided that: “This Act [amending sections 879, 3056 and 3486 of this title, repealing section 3486A of this title, and enacting provisions set out as notes under section 3056 of this title, section 551 of Title 5, Government Organization and Employees, and section 566 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Presidential Threat Protection Act of 2000’.”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 115, 879, 3056, 3486, 4247 of this title; title 8 section 1227.

**§ 872. Extortion by officers or employees of the United States**

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does